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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re F.P., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

F.P.,

Defendant and Appellant.

G053275

(Super. Ct. No. DL040527-006)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Lewis W. Clapp, Judge. Affirmed.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and
Minh U. Le, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

The juvenile court found that F.P. (defendant), then 16 years old, had possessed methamphetamine, a felony. Pursuant to Penal Code section 1170.18, the court later redesignated defendant's felony to a misdemeanor, but denied defendant's request that his DNA samples be expunged from the state's DNA database. (All further statutory references are to the Penal Code unless otherwise indicated.) Defendant, now 20 years old, appeals; we affirm.

Section 299, subdivision (f) specifically provides that, notwithstanding section 1170.18, a court shall not expunge DNA samples that were originally required to be given by a defendant. We conclude this statute means what it says, and agree with the other courts that have reached the same conclusion.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In July 2013, the Orange County District Attorney filed a petition under Welfare and Institutions Code section 602, alleging that defendant violated Health and Safety Code section 11377, subdivision (a), by possessing methamphetamine. Defendant admitted the allegations of the petition. The juvenile court granted him probation. As a term of probation, defendant was ordered to provide fingerprints and DNA samples pursuant to section 296.

In June 2015, defendant filed a petition to recall his sentence and reduce his felony offense to a misdemeanor, pursuant to section 1170.18. The prosecution agreed that defendant's offense was eligible for recall and resentencing. The juvenile court granted defendant's petition, designated his conviction for drug possession as a misdemeanor, and continued defendant's wardship.

In January 2016, defendant filed a motion to destroy his DNA samples and expunge his searchable database profile from the state's DNA and Forensic Identification Database and Databank Program, pursuant to section 299. The prosecution opposed the

motion. Following a hearing, the court denied defendant's motion; the court concluded it was "bound to follow the legislative mandate set forth in [section] 299(f), which specifically or explicitly states that a judge is not authorized to relieve a person of the separate administrative duty to provide a specimen or sample of prints if that person has been found guilty or adjudicated a ward of the court, and it says any other laws on that issue, including [section] 1170.18 [notwithstanding] that mandate, which is that [the court] cannot relieve a person of the separate administrative duty."

DISCUSSION

California law requires that DNA samples be collected from, among others, every person convicted of a felony. (§ 296, subd. (a)(1).) Persons who are convicted only of a misdemeanor are not required to provide DNA samples, with certain exceptions not relevant here. (See § 296, subd. (a)(3).) Section 299, subdivision (a), permits a person to request that his or her DNA information be expunged from the state's database "if the person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Databank Program and there otherwise is no legal basis for retaining the specimen or sample or searchable profile." Former section 299, subdivision (f), provided: "Notwithstanding any other law, including Sections 17, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide specimens, samples, or print impressions required by this chapter if a person has been found guilty or was adjudicated a ward of the court by a trier of fact of a qualifying offense as defined in subdivision (a) of Section 296" This subdivision prohibits expungement when a felony conviction for a wobbler offense is reduced to a misdemeanor. (*Coffey v. Superior Court* (2005) 129 Cal.App.4th 809, 820-823.)

In November 2014, the California voters enacted the Safe Neighborhoods and Schools Act (Proposition 47). Among other things, Proposition 47 reclassified

certain felony drug offenses as misdemeanors, and provided a means by which individuals previously convicted of those felony crimes could petition for reclassification. (§ 1170.18.)

In *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1217 (*Alejandro N.*), the appellate court held that, when a felony offense is reclassified as a misdemeanor pursuant to section 1170.18, a juvenile offender may request expungement of DNA materials from the state's database, unless there is a basis apart from the commission of the reclassified crime justifying their retention. In that case, the juvenile admitted committing felony burglary, and was declared a ward of the court. (*Alejandro N.*, *supra*, at p. 1217.) The juvenile court denied a request to reclassify the offense as a misdemeanor, and to expunge the juvenile's DNA profile from the state's database. (*Id.* at p. 1218.) The appellate court reversed the juvenile court's order, reclassified the juvenile's offense as a misdemeanor, and directed the juvenile court to reconsider the request to expunge. (*Id.* at p. 1230.)

In response to the court's holding in *Alejandro N.*, the Legislature amended subdivision (f) of section 299, to provide that reclassification under section 1170.18 does not authorize a judge to relieve anyone of the duty to provide DNA samples. That subdivision now reads: "Notwithstanding any other law, including Sections 17, 1170.18, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide specimens, samples, or print impressions required by this chapter if a person has been found guilty or was adjudicated a ward of the court by a trier of fact of a qualifying offense as defined in subdivision (a) of Section 296"

Following the amendment of section 299, subdivision (f), all published cases addressing this issue have concluded that expungement of a juvenile's DNA sample is not permitted when the felony of which the juvenile was found guilty is reclassified as a misdemeanor. We agree with the reasoning and analysis of these cases, and therefore we reach the same conclusion.

In *In re J.C.* (2016) 246 Cal.App.4th 1462, 1467, the minor had admitted an allegation of second degree burglary by shoplifting, which was then a felony. Following the passage of Proposition 47, the minor successfully petitioned the juvenile court to reduce the violation to a misdemeanor. (*In re J.C.*, *supra*, at p. 1467.) The juvenile court, however, denied the minor's request to expunge his DNA record. (*Ibid.*) In affirming the juvenile court's order, the appellate court concluded that the addition of the reference to section 1170.18 in section 299, subdivision (f) was "intended to prohibit trial courts, when granting a petition to recall a sentence under section 1170.18, from expunging the record of a DNA sample provided by the defendant in connection with the original felony conviction." (*In re J.C.*, *supra*, at p. 1472.) The appellate court noted specifically that before its amendment, section 299, subdivision (f) had provided that expungement of DNA samples was not permitted when a defendant obtained relief under sections 17 (treating a wobbler as a misdemeanor rather than a felony), 1203.4 (dismissal of charges after completion of probation), and 1203.4a (dismissal of misdemeanor or infraction charges). (*In re J.C.*, *supra*, at pp. 1472-1474, citing *Coffey v. Superior Court*, *supra*, 129 Cal.App.4th 809.) "Given this background, the meaning of the Legislature's inclusion of section 1170.18 in section 299(f) is clear. The original inclusion of a reference to section 17 in section 299(f) prohibited the expungement of a DNA record after a defendant's wobbler felony conviction is reduced to a misdemeanor pursuant to section 17. By the same logic, by inserting a reference to section 1170.18 in section 299(f), the Legislature has prohibited the expungement of a defendant's DNA record when his or her felony offense is reduced to a misdemeanor pursuant to section 1170.18." (*In re J.C.*, *supra*, at p. 1475.)¹

¹ Another issue addressed in *In re J.C.* was whether the amendment to section 299, subdivision (f) could apply, as the minor's request for expungement of the DNA was filed before the amended statute's effective date. (*In re J.C.*, *supra*, 246 Cal.App.4th at pp. 1475-1483.) In the present case, the request for expungement was first filed after the effective date of the amendment.

In re C.B. (2016) 2 Cal.App.5th 1112, 1116-1117, review granted November 9, 2016, S237801,² the juvenile court granted the minor's request to redesignate his felony grand theft adjudication as a misdemeanor, but denied his request that an order requiring DNA samples be vacated, and that his DNA samples be expunged from the state DNA database. The appellate court rejected the minor's challenge because the DNA sampling requirement was an administrative, not a punitive, act (*id.* at p. 1121), and because the taking of DNA samples was lawful, as they were taken when the court had adjudicated him guilty of a felony (*id.* at pp. 1122-1123). The court concluded "that section 1170.18 should be treated like section 17 for purposes of the DNA Database Act, with the effect that a felony reclassified as a misdemeanor under section 1170.18 remains a qualifying offense under the act, precluding the offender from obtaining additional relief in the form of expungement on the basis of such reclassification." (*Id.* at p. 1124.) Moreover, the court noted that "even before its recent amendment, section 299, subdivision (f), expressly stated that, *notwithstanding any other law*, a judge cannot relieve a defendant of the administrative duty to provide DNA for inclusion in the state's DNA database. Given this particular language, we decline to read the more general language in section 1170.18, subdivision (k) that an offense reclassified as a misdemeanor must be treated as a misdemeanor 'for all purposes' as a legislative grant of authority to a judge to disregard the restrictions placed upon his or her authority by section 299, subdivision (f)." (*Id.* at p. 1124.)

² The Supreme Court has not ordered that the opinion be depublished or that it is not citable, in whole or in part. (Cal. Rules of Court, rules 8.1105(e)(2), 8.1115(e)(3).) While this opinion has no binding or precedential effect while on review, it is cited here as persuasive authority. (*Id.*, rules 8.1105(e)(1)(B), 8.1115(e)(1).)

In *In re C.H.* (2016) 2 Cal.App.5th 1139, 1144, review granted November 16, 2016, S237762,³ the minor admitted to a felony violation of grand theft from a person, in violation of section 487, subdivision (c). Following the passage of Proposition 47, the juvenile court granted the minor’s petition to redesignate the felony as a misdemeanor, but denied the minor’s request to expunge his DNA sample. (*In re C.H.*, *supra*, at p. 1144.) The appellate court concluded that redesignation of a felony to a misdemeanor under section 1170.18 did not require expungement of DNA samples already taken from the minor. (*In re C.H.*, *supra*, at p. 1151.) In reaching its conclusion, the court analyzed the language of Proposition 47 and Proposition 69, which established the DNA databank program, and explained how their language must properly be read together. “To the extent there is any possible tension between section 1170.18 and sections 296 and 299, our job is to harmonize them where reasonably possible, reconciling inconsistencies and construing them to give force and effect to all of their provisions. [Citation.] Our conclusion today does just that. Section 1170.18 redesignates C.H.’s felony to be a misdemeanor for all future purposes, while at the same time giving force to the mandates of sections 296 and 299 that provide offenders must contribute DNA to the state database upon conviction or plea and set forth the statutory basis for expungement.” (*In re C.H.*, *supra*, at p. 1149.)⁴

³ The Supreme Court has not ordered that the opinion be depublished or that it is not citable, in whole or in part. (Cal. Rules of Court, rules 8.1105(e)(2), 8.1115(e)(3).) While this opinion has no binding or precedential effect while on review, it is cited here as persuasive authority. (*Id.*, rules 8.1105(e)(1)(B), 8.1115(e)(1).)

⁴ The appellate court in *In re C.H.* also addressed the minor’s equal protection argument, which is not raised in this case.

DISPOSITION

The postjudgment order is affirmed.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.